

## MINUTES

### ALCOHOL AND TOBACCO COMMISSION

FEBRUARY 2, 2010

#### CALL TO ORDER/NOTING OF QUORUM

Chairman Snow called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Johnson, Commissioner Guthrie and Commissioner Sturtz. Superintendent Huskey and Executive Secretary Dunsmore were also in attendance.

Grant Monahan, Connie Vickery, Lewis Coulter, Greg Genrich, C. Tooman, and John Barnett were present as observers.

#### DISPOSITION OF MINUTES

Commissioner Sturtz moved to approve the minutes that were submitted for the January 19, 2010 meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

#### HEARING JUDGE'S RECOMMENDATIONS

PAD FORMS – Commissioner Guthrie moved to approve the parties agreed disposition forms that were submitted for the February 2, 2010 meeting. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL50-26235 FREEDOM OIL, LLC – Hearing Judge Dunsmore stated this was a recommended denial of a new permit by the local board. The Commission upheld that denial. The applicant filed a timely notice of appeal and the matter was set for hearing. No remonstrators appeared at the appeal hearing. The Hearing Judge now submits his Proposed Findings of Fact and Conclusions of Law for recommendation to the Commission.

Vice Chairman Johnson moved to uphold the Hearing Judge's recommendation to overturn the denial and approve the new permit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

#### CONSIDERATION OF APPLICATIONS

I incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by said staff with the authority of the Commission, and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

I incorporate by reference these lists of permit applications for a new permit or application for changes in location or ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two Commissioners and

hereby move for approval of same and inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

I incorporate by reference these lists of permit applications for catering and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

I incorporate by reference these lists of permits to be placed in escrow for not more than one year, which have been reviewed and recommended by a Commissioner as appropriate for first or second year escrow and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Two hundred sixty (260) renewals approved, forty (40) new and/or transfer permits approved, three (3) permits approved for catering, six (6) permits approved for first year escrow, two (2) permits approved for second year escrow, five (5) permits approved for third year escrow and two (2) permits approved for fourth year escrow.

### **RENEWAL LETTERS AND WAIVER OF FEES**

Vice Chairman Johnson moved to approve the renewal letters and the waiver of fees for letters of extension for the preceding weeks. Motion seconded by Commissioner Guthrie and it was unanimously approved.

### **APPLICATIONS FOR DISCUSSION**

BEER DEALER PERMTIS – Commissioner Guthrie stated there are approximately 30-40 permits pending for this meeting. The court held a hearing yesterday regarding a request for a temporary restraining order stopping us from issuing these permits until the case is completed. Because of this pending litigation and because the judge does have this under advisement, I move that the Commission table these permits until we have a ruling from the court and let the parties try the case.

Chairman Snow stated for the record this is Cause #49DO21001PL001842 *Indiana Association of Beverage Retailers, Inc. vs. Indiana Alcohol and Tobacco Commission*. I know a hearing was held yesterday and intervener status was granted. The Commission's plan was to go ahead and continue to do business as we have for the last 30 years, but because a petition for a temporary restraining order has been applied for and is now under the jurisdiction of the judge, it would be an affront to any judge for us to continue when this issue is under advisement. The Chair and Commission thought there might be a decision regarding the petition by this meeting, however, that is not the case.

Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR20-19545 OAKLAND LANES, INC. – Commissioner Guthrie noted this is a type 112 renewal application with the local board voting two (2) to one (1) to approve for one year.

Commissioner Guthrie stated the Excise officer sitting on the board was the vote to deny based on the fact that this permittee has failed Excise compliance checks on two (2) occasions and was not aware that he had even been cited, which the officer felt showed a lack of knowledge of what was occurring at the establishment.

Commissioner Guthrie moved to overturn the local board and deny the renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR49-98061 LARMAC, INC., D/B/A GALLAGHER'S PLACE – Commissioner Guthrie noted this is a type 209 renewal application with the local board voting four (4) to zero (0) to disapprove.

Commissioner Guthrie stated the local board recommended denial because this permittee has not appeared, as required and requested, before them regarding the violations that occurred at the establishment.

Commissioner Guthrie moved to uphold the local board's recommendation and deny the renewal. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

RR35-23694 AND 23695 MILLIGAN'S, LLC – Commissioner Guthrie noted this is a type 103 and a type 210-1 transfer of ownership application with the local board voting three (3) to one (1) to approve.

Commissioner Guthrie stated the Excise officer sitting on the board recommended denial of the transfer because this was an ordered transfer by the Prosecutor with said order being that it be an arm's length transaction. This transfer has the current owner listed as manager on the transfer and the possible new owner stated he has no intention of doing anything with this permit himself, but going to transfer it to someone else. The officer does not feel this applicant is of high and fine reputation because of the way this being handled.

Commissioner Guthrie moved to overturn the local board and deny the transfer. Motion seconded by Commissioner Sturtz and it was unanimously approved.

### **INACTIVE FILES**

INACTIVE FILES – Vice Chairman Johnson moved to make four (4) permits inactive. All four (4) permits are not subject to auction. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR30-01795 MALOCKA SCOTT - Commissioner Guthrie stated this permittee has violations from 2008 that have not been cleared. She did not appear for the prehearing conference, or the Order to Show Cause hearing. Because of this, a letter was sent to the permittee stating that this permit would be made inactive at today's meeting. Commissioner Guthrie said he received a call from Ms. Scott prior to this meeting. She informed the Commissioner that the fine would be paid by Friday, February 5, 2010 at 4:30.

Commissioner Guthrie moved to revoke this permit, if the fine is not paid by Friday, February 5, 2010 at 4:30 p.m. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR45-21745 & 21746 CROWN BISTRO, INC. - Commissioner Guthrie noted this permit was deactivated on 9-28-08, in error. Renewals were filed, but filed in the wrong file, so the permit was made inactive. The permittee is requesting this permit be reactivated.

Commissioner Guthrie moved to reactivate this permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

### **OLD BUSINESS**

No Old Business

### **NEW BUSINESS**

No New Business

### **POLICY DETERMINATIONS**

No Policy Determinations

### **ANNOUNCEMENTS**

INDIANA STATE EXCISE POLICE DISTRICT 1 – Superintendent Huskey stated in an effort to abide with the cost saving efforts of the State, the State Excise Police District 1 will combine locations with the State Police in their Bristol Post. The Superintendent also stated this is a very nice facility and should work out well.

Chairman Snow commended Superintendent Huskey on his efforts.

### **ADJOURNMENT**

Commissioner Sturtz moved to adjourn the meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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P. TOM SNOW, CHAIRMAN

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DAVID JOHNSON, VICE CHAIR

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DALE STURTZ, COMMISSIONER

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FRANK GUTHRIE, COMMISSIONER